



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2016-0309; FRL-9993-31-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology for Cement Kilns, Revisions to Portland Cement Manufacturing Plant and Natural Gas Compression Station Regulations, and Removal of Nitrogen Oxides Reduction and Trading Program Replaced by Other Programs and Regulations; Correction**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects an error in the Environmental Protection Agency (EPA) rule language of the March 28, 2018 final rule pertaining to oxides of nitrogen (NO<sub>x</sub>) and Reasonably Available Control Technology (RACT), submitted by the State of Maryland.

**DATES:** This final correcting amendment is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2308. Ms. Powers can also be reached via electronic mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** On March 28, 2018, (83 FR 13192), EPA published a final rulemaking action announcing approval of several amendments to the Code of Maryland

Regulations (COMAR) into the Maryland SIP. The amendments included (but were not limited to): 1) NO<sub>x</sub> RACT for cement kilns for the 2008 ozone national ambient air quality standards (NAAQS); 2) the removal of obsolete provisions related to the NO<sub>x</sub> Budget Trading Program; and 3) amendments to the requirements for Portland cement plants and natural gas compressor stations.

In the final rulemaking, EPA inadvertently omitted COMAR 26.11.29.05 from the regulations incorporated by reference into the Code of Federal Regulations at 40 CFR 52.1070. The intent of the rule was to incorporate COMAR 26.11.29 in its entirety, consistent with Maryland's November 24, 2015 submittal, as well as EPA's original analysis of the submittal.<sup>1</sup> This document corrects the erroneous omission.

In the final rulemaking document published in the **Federal Register** on March 28, 2018 (83 FR 13192), on page 13195, in the second and third columns, the revised rule language should have read – “d. Adding the subheading “26.11.29 Control of NO<sub>x</sub> Emissions from Natural Gas Pipeline Stations” and the entries “26.11.29.01” through “26.11.29.05”.” Additionally, the table in paragraph (c) of section 52.1070, under the newly-added heading “26.11.29 Control of NO<sub>x</sub> emissions from Natural Gas Pipeline Stations” should have included COMAR 26.11.29.05.

### **Need for Correction**

As published, the final rule failed to fully incorporate Maryland's proposed SIP revision as it was submitted and as EPA intended to approve. Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue

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<sup>1</sup> See Technical Support Document at 6, in the docket for the original rulemaking action.

a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action which underwent notice and comment rulemaking. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

### **Corrections of Publication**

In this Final rule: correction, EPA is amending 40 CFR 52.1070 to incorporate COMAR 26.11.29.05 by reference, as was initially intended.

### **Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to Maryland regulations at COMAR 26.11.29 as discussed in this final action, and EPA's original, May 28, 2018 final action (83 FR 13192). EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>2</sup>

### **Statutory and Executive Order Reviews:**

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a

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<sup>2</sup> 62 FR 27968 (May 22, 1997).

significant regulatory action and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). Because the agency has made a good cause finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity,

minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to 40 CFR 52.1070 for Maryland is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 25, 2019.

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart V—Maryland**

2. In § 52.1070, the table in paragraph (c) is amended by adding the entry “26.11.29.05” in numerical order to read as follows:

**§ 52.1070 Identification of plan.**

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(c)\* \* \*

**EPA—APPROVED REGULATIONS, TECHNICAL MEMORANDA, AND STATUTES IN THE  
MARYLAND SIP**

<b>Code of Maryland Administrative Regulations (COMAR) citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation/ citation at 40 CFR 52.1100</b>
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<b>26.11.29 Control of NO<sub>x</sub> Emissions from Natural Gas Pipeline Stations</b>				
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26.11.29.05	Maintaining Records	7/20/2015	3/28/2018, 83 FR 13192	
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[FR Doc. 2019-09336 Filed: 5/10/2019 8:45 am; Publication Date: 5/13/2019]